THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No. 26877 OF 1995

Date: 28.11.2006

Between:

Dachineni Pichaiah and others.

…. Petitioners

and

The District Forest Officer, Guntur District, Near Medical Club, Guntur District and others.

…

Respondents.

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No. 26877 OF 1995

ORDER:

Seeking a writ of mandamus and to declare the action of the respondents in not giving permission to lift and take the drinking water from the seepage of Buga Vagu to Duggamma Cheruvu of Madugula Village, Gurazala Mandal as it is coming from the lands belonging to forests, as being contrary to law and public policy, and for a direction to the respondents not to interfere with or to threaten or actually damage the pipelines, the present writ petition is filed.

The petitioners are members of Madugula Gram Panchayat, Madugula, the population of which is 5000. According to the petitioners, the village has no drinking water or irrigation facility towards the western and adjacent side of the village. It is stated that there was a water tank called "Duggemma Cheruvu". This tank was being used for supply of drinking water to the villagers and cattle and for cultivation. The source of water for this tank is said to be the rain water which flows from the nearest catchment called "Kattu Kalava". Petitioners would submit that the catchment for this water was earlier from government poramboke land, but was subsequently taken over by the Forests Department in 1993 to develop forest lands for planting trees. On the ground that the catchment area, of the water flowing into Duggemma Cheruvu,

was taken over by the Forest Department, contrary to public policy, the present writ petition is filed. Reference is made to the fact that the villagers had made several representations requesting that either the drinking water scheme be executed or the natural flow of water from the catchment area be restored. It is contended that though a scheme was proposed to lift water from the nearest seepage of Bugga Vagu, the authorities had neither executed the scheme nor restored the previous flow of rain water. It is stated that from 1993 onwards, in order to overcome the hardship faced due to lack of water, the villagers had found an alternative Bugga Vagu and were lifting water by diesel engine and through a pipe to the left over Kattu Kalava and from there to the tank. It is stated that, whenever there was no water in the tank, the villagers used to get water from the seepage by diesel engine and pipes and that both the irrigation department and the Panchayat Raj Department had not objected thereto. Reference is made to the representation submitted by them to the Forest Department seeking permission to get water from the forest lands upto 2000 feet only till the alternate scheme, which was proposed, was implemented. It is stated that the respondents were threatening the petitioners and were preventing them from using the pipes on the land belonging to the Forest Department and had informed them that unless the pipes were removed, it would be damaged and a criminal case booked against the villagers. According to the petitioners it was not open to the Forest Department, without showing the villagers an alternate source of water, to disturb the Kattu Kalava on the pretext that the natural canal passes through the lands belonging to Forest department. According to the petitioners, since this land was earlier government poramboke, and was not useful for

cultivation, it was not open to the respondents to interfere with the petitioners right to have drinking water as long as no damage is caused to the forest land.

A counter-affidavit is filed, by the Divisional Forest Officer, wherein the allegation, that Madugula village does not have drinking water and irrigation facility towards the western and adjacent side of the village, is denied. It is stated that rain water flows from the nearest catchment through Kattu Kaluva into the tank, that this land has been notified as Reserve Forest in the year 1899 by notification dated 31.07.1899, that the tank is far away from the village and not convenient for using as a drinking water source. It is submitted that the fourth petitioner had purchased land adjacent to the Reserve Forest and that he had filed the writ petition in the guise of claiming water from the said tank through the Reserved Forest area to the villagers, though the fact was that he wanted water for his land. It is stated that there is a small water canal towards the northern side of the tank which leads to the village and is adjacent to the road through which the water flows. Suppressing this fact the petitioners were claiming right of way through Reserve Forest. It is contended that prior sanction of the Government of India is required, under the Forest Conservation Act, for drawing water through pipes from the Reserve Forest. It is stated that the villagers are not using the water tank for agricultural operations, that lift irrigation has not been provided for the said source, that it is only at the instance of the fourth petitioner, who had purchased Ac.12.00 cts of land in 1989-1990, that the writ petition was filed for his personal benefit and that none of the villagers had approached the authorities

seeking any relief. The allegation that the petitioners had lifted water from the seepage through the Reserve Forest Area is denied. It is stated that the fourth petitioner had tried to lay a pipeline, through the Reserved Forest during night time, which was objected to by the Forest Officials, he was requested to remove the pipe line and was informed that if he failed to do so criminal prosecution would be launched against him in accordance with law as laying of a pipeline in the Reserved Forest Area was illegal, un-authorised and in violation of the provisions of the Forest Conservation Act,1980.

The averments in the counter-affidavit would reveal that the writ petition has been filed disguised as in public interest, when in fact it is for the personal benefit of the fourth petitioner. The writ petition is, if the allegations made in the counter-affidavit are accepted as true, obviously an abuse of process of court and would necessitate dismissal with exemplary costs. It is, however, unnecessary for this Court to examine these allegations in detail since the land through which the petitioners seek to lay a pipeline is admittedly a Reserve Forest, having been notified as such, more than a century ago in 1899. Without the prior approval of the Government of India, under the provisions of the Forest Conservation Act, no such activity such as laying of pipelines is permissible in a Reserve Forest.

As laying of pipeline in the Reserve Forest would be contrary to the provisions of the Forest Conservations Act, the respondents would be well within their right to take such action as is available to them in law in case the petitioners, or any one else, interfere with and undertake any such form of activity in a reserve forest. The writ petition is devoid of merits and is accordingly

dismissed. However, in the circumstances, without costs.

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Date: 28.11.2006 RAMESH RANGANATHAN, J

MRKR